

### **Allocation Modification**

Sponsors requesting modifications to the IRS Form 8609 already issued by DHCD where the requested modification is not the result of an administrative error by DHCD must pay an Allocation Modification fee of One Thousand Dollars (\$1,000.00). This fee is not refundable.

### **B. Compliance Monitoring Fee Assessment & Payment Process**

Projects receiving an allocation of tax credits will be charged an annual Compliance Monitoring Fee. The fee will be assessed each year on July 1<sup>st</sup> beginning 2005. The fee for 2005 shall be due on August 15<sup>th</sup>; the fee for 2006 and subsequent years shall be due on April 1<sup>st</sup> of each subsequent year. The first year's "compliance fee" is due with the application for the issuance of the IRS Form 8609(s) for the project.

#### **a. Definition of Covered Projects**

All projects that have received an IRS Form 8609(s) prior to June 30, of the year in which it is issued shall be charged a Compliance Monitoring Fee of \$35.00 per unit; Projects receiving an allocation after June 30<sup>th</sup> of the year in which it is issued shall be charged a Compliance Monitoring Fee of \$25.00 per unit.

#### **b. Compliance Monitoring Fee Billing & Payment Process**

For the calendar year of 2005, all Compliance Monitoring Fees are due on or before August 1, 2005; commencing January 1, 2006 and thereafter all Compliance Monitoring Fees are due on or before April 1 of each calendar year. A notice will be issued to each project on or before February 15 of each year stating the amount of the Compliance Monitoring Fee due and the date and place where payment should be made. All projects receiving 8609's will be assessed the first years Compliance Monitoring Fee at the time of issuance of the 8609(s). Non-payment by the required time will be a cause for the issuance of an IRS Form 8823.

### **LIHTC SET ASIDE**

**Non-profit Set-aside** - As required by Federal law, no more than 90% of the District's annual LIHTC ceiling may be allocated to sponsors other than qualified non-profit sponsors. As such, 10% of the Per-Capita Credit ceiling is set-aside exclusively for projects developed by qualified non-profit sponsors. To be eligible to receive a reservation from this set-aside, sponsors must show that they will meet the following Federal requirements throughout the compliance period: (1) qualified sponsors must be exempt from tax under Section 501(c)(3) or 501(c)(4) of the IRC or be a wholly owned subsidiary of a qualified non-profit organization; (2) they must have as one of their tax-exempt purposes the development of low income housing; (3) they must own an interest in the

project either directly or through a partnership; (4) they must materially participate in the development and operation of the project through regular, continuous and substantial actions; and (5) they must not be affiliated with or controlled by a profit-motivated organization.

Reservations from the non-profit set-aside are permitted under circumstances where a partnership between non-profit and profit-motivated entities exists, only if each organization is independently controlled and operated and the non-profit materially participates in the development and operations of the project.

## **THRESHOLD CRITERIA**

To be rated and ranked during any round of competition, projects must meet all of the following threshold criteria. These requirements are intended to eliminate projects that do not meet basic program guidelines and to ensure that LIHTCs are reserved for projects that are viable and in compliance with District and Federal requirements. Projects that do not meet the threshold criteria will not be rated and ranked during competitive rounds.

**Federal Requirements for Eligibility** - The following criteria are Federal requirements related to tenant incomes, maximum rent levels and low income occupancy with respect to an eligible LIHTC project.

**Minimum Occupancy Restrictions** - At a minimum, sponsors must elect that either:

- 20% of the units in the project must be rented to families with incomes at 50% or less of area median income; or
- 40% of the units in the projects be rented to families with incomes at 60% or less of the area median income.

**Maximum Rent Levels** - Low income units in the project must be rent restricted as defined by Section 42(g) (2) of the IRC for a period of thirty years. (The compliance period of 15 years and an extended use period of 15 years.) Prior to the issuance of the Form 8609(s) by the District, the Developer must provide evidence that the restrictive covenant has been recorded.

**Eligible Projects** - Projects must involve new construction, acquisition, or rehabilitation. For projects involving rehabilitation, the rehabilitation costs must be the greater of \$3,000 per unit or 10% of the adjusted basis. This minimum rehabilitation requirement must be met within two years of the allocation of LIHTC. If applying for acquisition credit, projects must not have been placed in service or undergone substantial rehabilitation within the previous 10 years. Exceptions to the 10-year rule are provided for projects with Federal or other mortgages that are subject to prepayment provisions and for buildings acquired from failed financial institutions. In these cases, waivers from the IRS will be required before the LIHTC is allocated. A request for a waiver from the IRS will be required to meet the threshold criteria. The appropriate form will be available from DHCD.

In addition to these criteria, projects must fully comply with all Federal requirements as set forth in Section 42 of the IRS Code. Applications for projects that do not meet these criteria will be returned to the applicant without ranking.

**District of Columbia Eligibility Requirements** - The following criteria are the District of Columbia's requirements for eligibility. Generally, if any of the following criteria are not met, projects will not be ranked.

**Development Team** - (1) Members of the development team must certify that they are free of suspension or debarment from participating in any government programs, both local and Federal. (2) With respect to substantial liens and/or judgments and/or foreclosures and/or bankruptcies, applicants must have a history that is acceptable to DHCD. (3) Applicants must comply with any existing prior agreements with DHCD.

**The Application** - The LIHTC Application must be fully completed and all required attachments must be included. The specific form and required exhibits will be included in the periodic Notice.

**Site Control Requirements** - Satisfactory evidence of site control of the project must be provided. Satisfactory evidence of site control includes the presentation of deeds, contracts of sale, leases with purchase options or other forms acceptable to the DHCD. Applicants must provide evidence verifying notification of tenant's rights.

## **SELECTION CRITERIA**

Once projects meet the threshold requirements, they will be competitively evaluated, rated and ranked, based on pre-determined selection criteria, established in accordance with Federal law, the District's housing priorities and needs. The selection criteria are published in the attached DHCD Low Income Housing Tax Credit Program Guidelines and Procedures Manual (GPM), which is incorporated into the QAP by reference herein. The selection criteria may be revised, from time to time, to reflect the changing housing needs of the District and will be articulated in the Notice and GPM.

## **UNDERWRITING**

The Application will require the Developer to demonstrate that the Project is financially feasible and economically viable using the least amount of Tax Credits. DHCD shall determine whether the Developer has requested the least amount of Tax Credit necessary to ensure Project feasibility and to conform to the QAP. DHCD may adjust the amount of Tax Credits requested based upon DHCD's underwriting. Underwriting shall be performed on a Project at three stages: 1) prior to the time a reservation is awarded, 2) at Allocation Carryover, and 3) before a Form 8609(s) is issued. Developers will be required to file a new pro forma at each of these stages in the Tax Credit process. In addition, the Developer must supply the following information.

**Project Financial Information** - The Application will require the Developer to supply sufficient information to allow DHCD to determine whether the Project is financially feasible during both its construction phase and its operational phase. The Application will require the Sponsor to provide information regarding project loans, grants, equity contributions, the anticipated funds received from syndicators, equity partners or private funding sources for the Tax Credits,

enterprise zone benefits and any other type of financing or contributions that are relevant to the economic feasibility of the Project.

**Operating Reserves** - Projects are required to establish an operating reserve equal to three (3) months of projected operating expenses plus “must-pay” debt service payments. Such reserves must be maintained for five full years commencing after the Project has reached stabilized occupancy. Stabilized occupancy is a function of the vacancy rate used by the Developer in the Application. The Application will require the Developer to include a narrative explaining how the operating reserve will be established. The requirement for an operating reserve may be satisfied by the Developer utilizing the operating reserve required by the Project lenders or investors provided the reserve is equal to or greater than the reserve required by this Section.

The Ownership Entity may fund the operating reserve using an irrevocable letter of credit, which letter of credit may be released at the end of the five-year period described above in Section 4.2.

**Replacement Reserves** - Projects are required to establish a replacement reserve account by making monthly deposits equal to \$200.00 per unit per annum for new construction and \$300.00 per unit per annum for rehabilitation projects. The Application will require the Developer to include a narrative explaining how the replacement reserve will be escrowed and used. The replacement reserve must be shown on the pro forma.

The requirement for the replacement reserve is a compliance issue and may be satisfied using the terms and conditions of the replacement reserve required by lenders or other funds financing the Project, provided the reserve is equal to or greater than the reserve required by this Section. Developers are required to submit to DHCD a verification that the terms and conditions of the replacement reserve required by lenders or other funds financing the Project has or will be satisfied at the time a building is placed in service.

**Limits on Developer and Builder Fees** - Developer fees including overhead and profit and Consultant fees shall not exceed the percentages described below. The Developer’s fee is calculated as a percentage of Total Project Costs less the sum of the cost of land, Developer’s fee, Developer’s overhead and profit, consultant fees and project reserves. The Developer fees will be limited as follows:

**For new construction Projects;**

- One to 100 units – not to exceed 15%,
- 100 units and greater – not to exceed 12%;

**For acquisition/rehabilitation, adaptive reuse or historic preservation Projects;**

- One to 100 units – not to exceed 15%,
- 100 units and greater - not to exceed 12%.

**Builder and general contractor fees** will be limited to 12% of the Hard Construction Costs.

In the event Developer fee, consultant fee or builder fee limits are in excess of the limits imposed by DHCD, DHCD will make the appropriate adjustments during the underwriting phase of the evaluation of the Project.

**Debt Service Coverage Ratio** - In order to receive a Tax Credit Reservation, Developers must present a Project that can service its debt. The Debt Service Coverage Ratio for each year must be shown on the pro forma cash flow statement. In order to satisfy this requirement, the Project's Debt Service Coverage Ratio for years two, three and four must exceed 1.1%. The Developer must provide a narrative to justify any deviation.

**Annual Rent, Expense Trends and Vacancy Rates** - The Developer must assume and incorporate the trend for annual rent, expense and vacancy rate that DHCD will apply in underwriting the Project. The Developer must provide a narrative justification for the election of the factors. The pro forma must reflect the Project's ability to maintain a positive cash flow for 15 years.

**Subsidy Layering Review** - HUD is required to undertake subsidy-layering reviews of each Project receiving HUD housing assistance to ensure that the Ownership Entity does not receive excessive government subsidies by combining HUD housing assistance with other forms of Federal, State or local assistance. For Projects that combine HUD housing assistance with Tax Credits, HUD has delegated the subsidy layering review to DCHFA. HUD and DCHFA have entered into a Memorandum of Understanding ("MOU") governing the procedures that DCHFA must follow when undertaking the subsidy layering review. Projects receiving low interest financing under the HOME Investment Partnerships Program will not be treated as Federally subsidized if at least 40% of the units are rented to families with incomes of 50% of the area median or less. However, these projects are not eligible for the 30% increase in the eligible basis.

HUD has issued guidelines and administrative procedures that must be followed when undertaking the subsidy layering review responsibilities. Generally, the limits for Developer's fee, overhead, builder's profit and other fees will be applied by DCHFA in its subsidy layering review.

DCHFA will complete the subsidy layering review for applicable Projects after the Developer and HUD submit relevant documentation for review at carryover. This information includes the results of HUD's underwriting analysis, the Developer's proposed development costs, and information concerning any syndication of the Project. DCHFA will undertake the subsidy layering review for each Project after completion of HUDs' and DHCDs' underwriting, if applicable. HUD has established safe harbor and ceiling standards for specific project costs. When evaluating projects under HUD's guidelines, DCHFA may apply the safe harbor standards unless sponsors can show that projects meet certain criteria making them eligible for the increased ceiling standards. To be considered for the higher ceiling standards, projects must meet at least one